IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 138 of 2006
In
COMPANY APPLICATION No. 276 of 2006
With
COMPANY PETITION No. 139 of 2006
In
COMPANY APPLICATION No. 277 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NETVISION WEB TECHNOLOGIES LTD - Petitioner(s)
Versus
. - Respondent(s)

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Appearance :
MRS SANGEETA N PAHWA for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/05/2007

ORAL JUDGMENT

1. Company Petition No.138 of 2006 is filed by the

petitioner - Net Vision Web Technologies Limited (demerged company) and Company Petition No. 139 of 2006 is filed by the petitioner – BARA Machines Private Limited (transferee company) both the considering and if though fit, to sanction, with or without modifications the proposed scheme of arrangement for the purpose of demerging of the estates and properties division of the demerged company into the transferee company.

2. It has been submitted in the petitions that the demerged company is predominantly engaged in the business of software development and selling multi media products and is a profit making company and the turnover of the company during the financial year 2004-05 had been more than Rs.25 Crores and that the company's equity shares are listed on the stock exchange at Mumbai and Ahmedabad. It is also further submitted in the petitions that the transferee company is a private limited company incorporated in the year 2000 and the said

company is in the business of manufacturing electric motors and gear box. It is further submitted that with a view to restructure the business activities of both the companies, the management of both the companies decided that the estates and properties division of the demerged company be demerged into the transferee company and the same will strengthen the business and financial position of the companies. The advantages of the proposed scheme of arrangement has been mentioned in the petitions.

3. It is further submitted that pursuant to the order passed by this Court dated 21.6.2006 passed in Company Application No. 276 of 2006, the meetings of the shareholders and the unsecured creditors of the demerged company were convened on 25.7.2006 and all the unsecured creditors as well as the shareholders, who remained present in the meetings have unanimously supported the scheme of arrangement. The Chairman's report dated 28.7.2006 in respect

of the meeting of the unsecured creditors as well as in respect of the meeting of the shareholders, supported by affidavit dated 14.8.2006 is placed on record (Page 107 / 109).

It is also further submitted that having procured and produced the written consent of all the shareholders of the transferee company vide order dated 14.6.2006 passed by this Court passed in Company Application No. 277 of 2006, the meetings of the shareholders of the transferee company was dispensed with.

4. Both the petitions came to be admitted by this Court vide order dated 14.8.2006 and directed publication of the notice of hearing of the petition in English Daily “Business Standard” and Gujarati Daily “Lok Satta – Jan Satta” - Ahmedabad edition. This Court also issued notice to the Regional Director, Western Region, Department of Company Affairs and affidavit of publication of the advertisement is filed on 12.9.2006.

5. In response to the notice to the Regional Director, Western Region, Department of Company Affairs, Shri Harin Raval, learned Assistant Solicitor General of India has appeared and has filed the affidavit of Assistant Registrar of Companies dated 2.2.2007 along with the copy of the letter dated 23.1.2007 addressed by the Regional Director to the Registrar of Companies making certain observations against the proposed scheme of arrangement. In response to the observations made by the Regional Director, the petitioners have filed affidavit dated 12.2.2007. It appears that after the affidavit dated 12.2.2007, the Regional Director is satisfied with regard to the proposed scheme of arrangement, except his observation with regard to non-furnishing of Form No.17 for satisfaction of the charge by secured creditors in respect of the demerged company. Shri Navin Pahwa, learned advocate appearing for the respective petitioners, more particularly, the demerged company has submitted that the petitioner has

filed additional affidavit dated 2.3.2007 and it is stated in the affidavit that the petitioner has filed Form No.17 with respect to the dues of IndusInd Bank Limited on 1.3.2007 and the copy of the Form No.17 is also annexed along with the affidavit. It is also further submitted that with respect to the dues of ICICI Bank Limited as the charge was only on the computers which were bought from the funds advanced by ICICI Bank Limited, the petitioner did not file Form No.8 in the office of the Registrar of Companies and therefore, the petitioner is not required to file Form No.17. It is also further submitted by him that as such, dues of both IndusInd Bank Limited and ICICI Bank Limited have been repaid long back even before filing of the present proceedings and the each copy of the no due certificate issued by ICICI Bank Limited and IndusInd Bank Limited are produced along with the affidavit dated 12.2.2007. It is submitted that as the Form No.17 is already filed and considering the no due certificate with regard to payment to the banks and subject to the order

that may be passed by the Company Law Board, which shall be abided by the petitioners, it is requested to sanction proposed scheme of arrangement of demerger. It is further submitted that as such, while considering the scheme under Section 394 of the Companies Act what is required to be considered is as to whether the activities of the companies are against the public interest and its members or not. It is submitted that as all the objections are dealt with and complied with, the proposed scheme of arrangement of demerger is not against the public interest and its members and therefore, it is requested to sanction the proposed scheme of arrangement for the purpose of demerging of the estates and properties division of demerged company into transferee company.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. It is required to be noted that earlier by communication dated 23.1.2007 the Regional

Director made certain observations and objected to the proposed scheme of arrangement by submitting five observations, however, subsequently, with respect to objection Nos.1 to 4, detail clarification has been given by the petitioners and the Regional Director is satisfied with regard to the same. Under the circumstances, those observations will not survive. Now so far as the observation of the Regional Director with regard to non-furnishing the copy of Form No.17 for satisfaction of the charge by secured creditors in respect of the demerged company is concerned, it is required to be noted that subsequently the Form No.17 is already submitted and the dues of the secured creditors are already paid and no due certificate issued by the ICICI Bank Limited and IndusInd Bank Limited are produced along with the affidavit dated 12.2.2007. Under the circumstances, subject to the order that may be passed by the Company Law Board with regard to late filing of Form No.17, the petitioners shall abide by the said order, and more particularly,

it is not the case on behalf of the Central Government that the proposed scheme of arrangement is against the public interest and / or its members hence, there shall not be any impediment in sanctioning the proposed scheme of arrangement for the purpose of demerging of estates and properties division of Net Vision Wed Technologies Limited (demerged company) into BARA Machines Private Limited (transferee company). It is also required to be noted that the unsecured creditors and the shareholders of the demerged company as well as the equity shareholders of the transferee company have given their consent to the proposed scheme of arrangement and nobody has objected to the proposed scheme of arrangement of demerger.

8. For the reasons stated above, both the petitions are allowed. Prayer in terms of paragraph – 11 (A) of Company Petition No. 138 of 2006 and prayer in terms of paragraph – 9 (A) of the Company Petition No. 139 of 2006 are hereby granted. Both the petitions are accordingly

disposed of. So far as costs to be paid to the learned Additional Central Government Standing Counsel is concerned, the same is quantified at Rs.3500/- per petition and the same be paid by the respective petitioners to Shri Harin Raval, learned Additional Central Government Standing Counsel.

[M.R.Shah, J.]

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